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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/664,273

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George D. Hermann

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EXAMINER

RYCKMAN, MELISSA K

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/664,273	Applicant(s) HERMANN ET AL.	
	Examiner MELISSA RYCKMAN	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 and 51-54 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-21,23-49 and 51-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to claims filed 11/23/10.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 15-19, 30-33, 48, 49 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty (U.S. Patent No. 6,228,104) and further in view of Pierce (U.S. Patent No. 5,893,878).

Claims 1,19,48,49:

Fogarty teaches an insert for attachment to a jaw-type surgical instrument adapted for grasping or occluding a vessel, said insert comprising an elongate member (80) having opposed proximal and distal ends, a compliant cushion (80) having a tissue-engaging contact surface, said insert further comprising a back surface opposite to said contact surface, and a jaw attachment (86a) member on the back surface, wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions.

Fogarty teaches the claimed invention but does not specify hooked elements; however Pierce teaches a jaw-type instrument having a surface with a plurality of molded, hooked traction elements on at least a region of said surface, where the

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hooked traction elements (80 and 24 together in Fig. 13 are hooked traction elements-hook as defined by a curved substance for catching, pulling, holding or suspending something, each of 80 and 24 are curved and are capable of holding something) are configured to have at least two crooks (24 and 80, Fig. 13), wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have hooked elements as this aids in securely holding tissue.

Claims 15-18 and 30-33:

Since the device of Fogarty teaches all structural limitations as set forth by the independent claims, it is inherent that the device is capable of performing the function required by the claims, that being providing traction forces of either 6-8 pounds or 1.5-2 pounds.

Claims 51-53:

Fogarty and Pierce teach the claimed invention including using a plastic material (the durometer is not stated, however the claim simply states about 2A to about 90A, therefore using the broadest reasonable interpretation the material of Fogarty and Pierce would have a durometer of *about* 2A to 90A, Fogarty teaches a durometer of 15-70 A col. 5, ll. 50) the integral piece that connects the jaw attachment member to the cushion, except do not teach two separate pieces that connect the jaw attachment member to the cushion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have two separate pieces connect the jaw attachment member to the cushion, since it has been held that constructing a formerly

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integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Fogarty teaches two different materials used for each side (col. 5, ll. 53-55) including an elastomeric material and a plastic. Fogarty does not specify first overmold being more rigid than the second overmold, however it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a more rigid material (plastic, as in the art it is common for plastics to be considered more rigid than elastomeric materials) for the first overmold to maintain the position of the cushion in the jaws.

Claims 5-7, 23-25 and 42-47, are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty (U.S. Patent No. 6,228,104) and Pierce (U.S. Patent No. 5,893,878) as applied to claims 1 and 19 above, and further in view of Bramstedt (U.S. Patent No. 2,706,987) .

Fogarty and Pierce teach the claimed invention, where Pierce teaches an insert (44) for attachment to a jaw-type surgical instrument (Fig. 1) adapted for grasping or occluding a vessel, said insert comprising a compliant cushion (22) having a tissue-engaging contact surface (24) and having a plurality of molded, hooked traction elements on at least a region of said surface (fig. 1), wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface (Fig. 13), but Fogarty and Pierce are silent regarding the height of the traction elements being no more than about .3mm. Bramstedt teaches surgical clamp inserts, wherein the traction

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elements are .004-.008 inches (Bramstedt, col. 1, ll. 35) in order to provide lessened or reduced residual witness marks corresponding to less trauma to the clamped vessel.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Fogarty and Pierce with traction elements no more than .3 mm in height in order to provide lessened or reduced residual witness marks corresponding to less trauma to the clamped vessel.

Claims 8-14, 26-29 and 34-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce, Fogarty and Bramstedt (US 2706987) as applied to claims 5 and 23 above, and further in view of Romanko et al. (US 6484371).

Pierce, Fogarty and Bramstedt teach all limitations of preceding dependent claims 5 and 23, and limitations of independent claims 13, 34 and 38 as described with respect to claims 5 and 23, but fails to teach the density of hooked traction elements on the surface is at least $300/\text{cm}^2$. Regarding the limitation wherein the density of the hooked traction elements on the surface region is at least $300/\text{cm}^2$, Romanko teaches wherein the density of the hooked traction elements may be up to 465 elements per square centimeter or less. It would have been an obvious matter of design choice to provide Pierce, Fogarty and Bramstedt with a traction element density of $300/\text{cm}^2$, since applicant has not disclosed that providing such a density provides any advantage over other densities, and providing a density of $300/\text{cm}^2$ is well known in the art.

Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce and Fogarty as applied to claim 3 above, and further in view of Romanko et al. (US 6484371).

Fogarty and Pierce teach the claimed invention but are silent regarding a hook comprising a single stem with two crooks extending in opposite directions from said single stem. However Romanko teaches a hook with a single stem (22, Fig. 1) with two crooks (Fig. 1) extending in opposite directions from said stem. Replacing one type of known hook with another known hook is an obvious substitution of one known element for another. The replacement would be expected to yield a device which hooks tissue.

Response to Arguments

The applicant argues Pierce does not teach the hooks that are lacking in Fogarty, and it would not be obvious to combine Pierce and Fogarty. The examiner's position is elements 80 and 24 together in Pierce in Fig. 13 are hooked traction elements (hook as defined by a curved substance for catching, pulling, holding or suspending something), each of 80 and 24 are curved and are capable of holding something. Claim 54 further defines the hook and crooks, however is rejected in view of Romanko as described above.

Conclusion

Applicant's amendment (for claims 52-54) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

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See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA RYCKMAN whose telephone number is (571)272-9969. The examiner can normally be reached on a flexible schedule, email address is melissa.ryckman@uspto.gov.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR
/Melissa Ryckman/
Examiner, Art Unit 3773

/Darwin P. Erez/
Primary Examiner, Art Unit 3773